LETTERS *to the Editor*

EDITOR'S NOTE: The 1962 Report of C.M.A. Legal Counsel to the House of Delegates commented on a recent California Supreme Court decision captioned Rosner *vs.* Eden Township District Hospital. Doctor Ben Rosner, the plaintiff in the case, has taken exception to Legal Counsel's summarization. Doctor Rosner's letter follows.

IN "Report of Legal Counsel to the President and the House of Delegates" published in the California Medical Association Annual Reports Bulletin for the year 1962, pages 38 and 39, a statement is made: "In one case (Rosner v. Eden Township District Hospital) the Supreme Court held that a district hospital (which is a governmental body) cannot lawfully exclude from staff membership a physician who is medically competent and ethical in his practice *solely* because he had freely criticized other physicians and hospital personnel. The Court . . . held that a personality trait, even though objectionable to others, would not relate to the statutory requirements for staff membership."

There is no language in the California Supreme Court decision which directly or inferentially supports these statements. If anything, the Court's holding is directly to the contrary. I extract the following quotations from the Supreme Court decision: ". . . It was stipulated that 'moral character' and 'competence' . . . were not in issue. In view of this stipulation the determination of unworthiness of character was outside the issues; moreover, it finds no support in the evidence.

"Dr. Rosner had been accorded privileges in approximately 40 hospitals, and the record shows that in several of the hospitals there was friction resulting from disagreements as to treatment of patients, criticisms made by him to hospital officials of certain personnel and practices, or misunderstandings relating to his position and powers. Insofar as the merits of the controversies occurring at those hospitals can be determined from the record before us, Dr. Rosner appears in a more favorable light than the other medical personnel involved.

"The evidence relating to the Levine Hospital, where he was employed immediately prior to applying for membership at Eden Hospital, may be summarized as follows: The Levine Hospital is owned by Drs. Samuel and Julius Levine, the latter of whom was also at one time chairman of the board of directors of Eden Hospital. . . . Dr. Rosner told Dr. Samuel Levine that a nurse-anesthetist . . . was incompetent. . . . Two days later a baby died as a result of an anesthetic given by the nurse, and Dr. Rosner stated to the Levines that the surgeon was responsible . . . and that the Levines were also responsible. . . . Subsequently Dr. Rosner, in reviewing the record of the operation, said to one of the Levines that the record 'on its face' showed malpractice.

"On another occasion there was an argument when Dr. Samuel Levine stated that it was too late to do anything for a patient who had suffered a gunshot wound and Dr. Rosner insisted that the patient be taken to the operating room and efforts made to save him. Dr. Rosner prevailed, and the patient survived and testified at the hearing concerning the argument.

"Shortly after these occurrences, Dr. Rosner was told by Dr. Julius Levine that he would be 'blocked' in the medical society and all the hospitals in the community.

"The refusal of access to a district hospital could, as a practical matter, have the effect of denying to a licensed doctor qualified to practice in California the right to fully exercise his profession. . . . The goal of providing high standards of medical care requires that physicians be permitted to assert their views when they feel that treatment of patients is improper or that negligent hospital practices are being followed. Considerations of harmony in the hospital must give way where the welfare of patients is involved, and a physician by making his objections known, whether or not tactfully done, should not be required to risk his right to practice medicine.

"Moreover, a hospital district should not be permitted to adopt standards for the exclusion of doctors from the use of its hospital which are so vague and ambiguous as to provide a substantial danger of arbitrary discrimination in their application. . . . In these circumstances there is a danger that the requirement of temperamental suitability will be applied as a subterfuge where considerations having no relevance to fitness are present. It may be noted that Dr. Rosner opposed election to the board of directors of a slate of candidates endorsed by members of the medical staff. . . .

"The determination of the board that Dr. Rosner was unworthy in professional ethics was based on findings as to his conduct in the hearings, namely, that in his testimony he discussed medical and surgical problems of other doctors. . . . The only medical and surgical problems and procedures discussed by Dr. Rosner were those which led to friction with other doctors, and his testimony was in response to questions asked or in explanation of matters raised by the board's attorney. . . . In any event there is no evidence that he misrepresented the nature or extent of his experience at the hospitals."

My statements relating to differences were extracted as testimony under oath in cross-examination by Eden Hospital's attorney in open public hearings ordered by the Superior Court of Alameda County after my application had been rejected. Eden's attorney was assisted by counsel provided "as a courtesy" by the official group malpractice insurance carrier for the Alameda-Contra Costa and the 22 other medical societies in northern California, the American Mutual Liability Insurance Company.

The enclosed Supreme Court decision in my favor was concurred in unanimously by all seven Justices, and written by Chief Justice Phil S. Gibson, (citation: 58 Calif. 2d 592).

Neither had I "freely criticized other physicians and hospital personnel," nor did the California Supreme Court decision state anything resembling this; moreover, this statement is false. There is nothing in the record, nor in the decision, indicating any "personality trait" on my part that the Supreme Court considered "objectionable to others."

The authors of the report, Peart, Baraty & Hassard, by Howard Hassard (C.M.A.'s Executive Director since 1958) filed a brief for the C.M.A. as an amicus curiae against my position in the Supreme Court. They are therefore thoroughly familiar with the facts of my case and the Supreme Court decision, and know better than to make and publish such misleading statements.

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